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In the Supreme Court of the United States

OCTOBER TERM, 1964

No. 308

NICK CHOURNOS AND ALTON MORRELL, PETITIONERS

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINION BELOW

The opinion of the court of appeals is reported at 331 F. 2d 498. The district court did not render an opinion.

JURISDICTION

The judgments of the court of appeals were entered on April 28, 1964. The petition for a writ of certiorari was filed on July 21, 1964. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTION PRESENTED

Whether petitioners in a suit against the United States, under the Federal Tort Claims Act, may re-

cover for damages allegedly caused by Federal Range Officials' denials of their applications for permits to graze livestock on the public domain.

STATUTES INVOLVED

The pertinent sections of the Federal Tort Claims Act, 28 U.S.C. 1346(b), 2671 *et seq.*, and of the Taylor Grazing Act, 48 Stat. 1269, as amended, 43 U.S.C. 315 *et seq.*, are set forth in the appendix, *infra*, pp. 15–22.

STATEMENT

Acting in accordance with their understanding of the requirements of the controlling Taylor Grazing Act [1] and Federal Range Code for Grazing Districts,[2] officials of the Bureau of Land Management, Department of the Interior, rejected petitioners' applications to graze their livestock on Federal Range lands in Utah. During the relevant period other livestock operators, whom range officials believed entitled to preferential use of the Federal Range under the Act and the Range Code, were permitted to graze livestock on the portions of the Federal Range in question. Some of those other livestockmen permitted their animals to drift onto and consume forage from petitioners' adjacent and intermingled private holdings. Petitioners brought these suits against the United States under the Federal Tort Claims Act [3] seeking to recover not the value of their destroyed forage, but rather the profits which they allegedly could have made had they

[1] 48 Stat. 1269, 1270, as amended, 43 U.S.C. 315 *et seq.*

[2] 43 C.F.R., §§ 161.1–161.19.

[3] 28 U.S.C. 1346(b), 2671 *et seq.*

been permitted to graze their livestock on the public range.

1. THE TAYLOR GRAZING ACT AND THE RANGE CODE

Although these suits were brought under the Federal Tort Claims Act, the court of appeals stated that "the controversy is over rights to graze livestock on the public domain," 331 F. 2d at 499. Under the Taylor Grazing Act, 43 U.S.C. 315, responsibility for administering the vast Federal Range has been vested by Congress in the Secretary of the Interior. The Secretary is authorized to establish livestock grazing districts, to issue grazing permits for use of the range, and to issue such regulations as he believes necessary "to provide for the orderly use, improvement, and development of the range." 43 U.S.C. 315a. The Act further provides that (43 U.S.C. 315b):

> Preference shall be given in the issuance of grazing permits to those within or near a [grazing] district who are landowners engaged in the livestock business, bona fide occupants or settlers, or owners of water or water rights, as may be necessary to permit the proper use of lands, water or water rights owned, occupied, or leased by them * * *.

However, the Act contains the additional proviso that priority in receiving such grazing permits was to be accorded first to those persons meeting the statutory criteria on or before January 1, 1934, 43 U.S.C. 315b.

The regulations issued by the Secretary under the Taylor Grazing Act are commonly referred to as the Federal Range Code. 43 C.F.R., §§ 161.1–161.19. Among other items, the Range Code spells out in

detail the persons entitled to a preference to graze their livestock on the Federal Range. Such persons are those (or their transferees) who were actually using the range for livestock operations in conjunction with their private holdings during a priority period (1929–1934), and whose livestock operations on their privately controlled land is dependent on continued use of the Federal Range. 43 C.F.R., §§ 161.2, 161.6. The number of livestock which a preferential permittee may run on the range is limited both by the capacity of his own land and the capacity of the Federal Range, as well as by the requirements of good grazing practice in the district involved. 43 C.F.R., § 161.6(e).

In addition, the Range Code provides for another, nonpreferential, type of arrangement under which a private livestock raiser can be permitted to graze his animals on the Federal Range. 43 C.F.R., § 161.6(c). Known as an "exchange of use," it comes into play in situations such as presented in these cases, where the private landowners are not entitled to preferential rights to graze on the public domain, but their private lands are adjacent to or intermingled with the Federal Range. In many cases, such interspersed private land may be grazed most efficiently in conjunction with the use of the public range. Conversely, the administration of those private holdings as an integral part of the public domain may be to the advantage of good range management. In such situations, the Range Code provides that an "exchange of use" may be entered into whereby the

private landowner is permitted to graze on the Federal Range a number of animals not in excess of the livestock which his scattered private holdings could theoretically support. In exchange, his private holdings are administered as an integral part of the grazing district. 43 C.F.R., § 161.6(c).

Applications for exchange-of-use licenses (as well as for preferential permits) are made to the District Range Manager, an employee of the Bureau of Land Management, Department of the Interior. 43 C.F.R., § 161.9. While that official determines whether the applications are to be granted, he acts only after receiving the advice of a statutory board of grazing district advisors elected from among the stockmen using the range in the grazing district. 43 U.S.C. 315o–1. If the board makes an adverse recommendation on an application for an exchange-of-use license, the Range Code entitles the applicant to a hearing before the board and reconsideration by that body. 43 C.F.R., § 161.9. If the District Range Manager approves an adverse recommendation by the board, a dissatisfied applicant may appeal the ruling to higher officials in the Department up to the Secretary himself. 43 C.F.R., § 161.10.

It was the issuance of preferential grazing permits to persons whom the range officials deemed entitled to receive them under the Act, together with the denial of exchange-of-use licenses to petitioners, which led to these suits.

2. THE PRESENT CASES

Petitioners Chournos and Morrell are livestock raisers who owned or controlled grazing lands in Utah intermingled with Federal Range lands of similar character. In years prior to the times in suit, petitioners had entered into exchange-of-use arrangements with Federal Grazing officials. As described above, they were thus permitted to graze their livestock on the public domain to the extent of the grazing capacity of the private lands whose use they exchanged. Their lands were in turn administered as part of the Federal grazing districts. However, in 1958 and succeeding years[4] petitioners' applications for exchange-of-use licenses were rejected by the district grazing officials upon the advice of the respective boards of stockmen. In each instance the reason given for the rejections was the same: either the lands offered by petitioners for use in exchange for use of the public range were seriously deficient in grazing capacity to support the number of animals which petitioners sought to run on the public domain, or the grazing of additional animals as requested was contrary to the requirements of good range management (R. 321, 326, 329, 338, 340, 348).[5] In each in-

[4] In Mr. Morrell's case the years in question are 1958 and 1959; in Mr. Chournos' case, 1958, 1959 and 1961.

[5] "R." refers to the Transcript of Record in the court of appeals, copies of which petitioners have filed with this Court.

stance petitioners were advised of their rights under the Range Code to appeal from the District Managers' decisions.

At the time petitioners' applications for exchange-of-use licenses were denied, the range officials accorded other livestockmen their usual preferential grazing rights on the Federal Range Areas in question (R. 292–293) (Petitioners did not request preferential grazing rights; their applications were restricted to "exchange-of-use" licenses only, which do not involve preferential rights[6]). As the court of appeals correctly noted, those grazing permits were restricted on their face to the use of the public domain only. 331 F. 2d 502. Some of those permittees, however, did not so confine their livestock but permitted them to drift onto and consume forage from petitioners' private holdings.

Alleging that Range Officials "wrongfully and overtly encouraged, directed, counseled, advised and aided and abetted" those trespasses (R. 10, 63), petitioners brought these actions against the United States under the Tort Claims Act.[7] However, as the Tenth Circuit noted, they sought as damages not the value of the forage which was consumed from their lands, but

[6] Their applications appear at R. 318–331, 333–349. Petitioners never claimed to have been using this area of public domain in connection with their livestock operations during the base period before 1934, which was necessary under the Range Code to claim preferential grazing rights in this grazing district. 43 C.F.R., §§ 161.2, 161.3. See *McNeil* v. *Seaton*, 281 F. 2d 331 (C.A.D.C.).

[7] Chournos filed two complaints, the second being intended only to cover an additional period of time (R. 88).

their anticipated profits had they been accorded grazing privileges on the public range. 331 F. 2d at 502.

The cases were jointly tried. The district court found that, because of the scattered nature of their holdings among the public domain, neither petitioner could make any grazing use of his own lands without leave to use the Federal Range (R. 36, 81). That court went on to conclude, however, that petitioners were entitled as a matter of law to the grazing permits they sought and that failure to accord such permits was tortious and compensable under the Tort Claims Act. The court awarded judgments to Chournos of $218,400 and to Morrell to $97,500, together with interest from the date of judgment (R. 45–46, 85–86). The amounts of the judgments were based on the profits allegedly lost by petitioners because of the denial to them of grazing privileges on the public lands (R. 45, 85).

In reversing these judgments, the court of appeals ruled that there was no evidence in the record of any aiding and abetting of the trespasses by government officials, noting that "the record discloses that the officials did no more than issue the [grazing] permits," 331 F. 2d at 501. Citing its prior decision in a case involving one of these same petitioners in which it had held that the issuance or denial of grazing permits is a "discretionary function" vested in the range officials, *Chournos* v. *United States*, 193 F. 2d 321, certiorari denied, 343 U.S. 977, the Tenth Circuit held that 28 U.S.C. 2680(a), the section of the

Tort Claims Act providing the "discretionary function" exception,[8] barred the petitioners' recovery. In ordering the actions dismissed the court of appeals stated (331 F. 2d at 502):

> The plaintiffs are trying by these actions to establish their rights to permits for grazing the public demain. This is inherent in their presentation. They insist that their rights have been denied; and they seek recovery, not for the value of the forage consumed on their land but for the loss of profits which they say they would have made if the permits which they seek had been granted to them. The use of the Tort Claims Act for the determination of such rights cannot be sustained. Those to whom the preferential permits have been issued are not parties and cannot be heard. If the plaintiffs are upheld and the preferential rights taken away from the present holders, those persons might well sue under the Tort Claims Act and thus subject the government to inconsistent recurring liabilities. In our opinion the open range cannot be administered on the basis of court decrees in individual tort actions.

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[8] 28 U.S.C. 2680:

> The provisions of [the Federal Tort Claims Act] shall not apply to—
>
> (a) Any claim based upon an act or omission of an employee of the Government, exercising due care, in the execution of a statute or regulation, whether or not such statute or regulation be valid, or based upon the exercise or performance or the failure to exercise or perform a discretionary function or duty on the part of a federal agency or an employee of the Government, whether or not the discretion involved be abused.

ARGUMENT

In this case the Tenth Circuit has ruled that Federal Range Officials, in making determinations whether to grant applications for permission to graze livestock on the public domain in accordance with the requirements of the Taylor Grazing Act and the Range Code, are exercising discretionary functions; and that the government therefore cannot be held liable in tort on the basis of the Range Managers' exercise of that discretion. This decision is correct and, contrary to petitioners' assertions, does not conflict with decisions of this Court or of any other court of appeals. Further review is therefore not warranted.

1. To provide for the orderly use, improvement and development of grazing on the public range as directed by the Taylor Grazing Act, 43 U.S.C. 315a, the Secretary of the Interior has promulgated the Range Code. Under the Act and those regulations, a District Range Manager (in consultation with a statutory board of stockmen) must determine, *inter alia*, with regard to the public land in his jurisdiction: livestock carrying capacity; proper seasons of use; the number and kinds of animals to be grazed; the eligibility of applicants for preference in grazing privileges; the capacity and desirability of lands offered in exchange for use of the public domain. On the basis of all the foregoing factors, together with the requirements of "good range management," he must then decide which persons are to be permitted,

and to what extent, to graze their livestock on the public lands. 43 C.F.R., §§ 161.1–161.6. On at least five prior occasions, including one case essentially on all fours with the case at bar and involving one of these same petitioners, courts have ruled that the issuance and denial of such grazing permits is a discretionary function within the meaning of 28 U.S.C. 2860(a), and that consequently no recovery under the Tort Claims Act is permissible. *Chournos* v. *United States,* 193 F. 2d 321 (C.A. 10), certiorari denied, 343 U.S. 977; *Powell* v. *United States,* 233 F. 2d 851 (C.A. 10); *Oman* v. *United States,* 195 F. 2d 710, 711 (C.A. 10); *Kunzler* v. *United States,* 208 F. Supp. 79 (D. Utah), appeal dismissed on appellant's motion, 307 F. 2d 511 (C.A. 10); and *Smith* v. *United States,* 101 F. Supp. 87 (D. Colo.), appeal dismissed, 196 F. 2d 222 (C.A. 10).

The cases cited by petitioners are not to the contrary. In *Oman* v. *United States,* 179 F. 2d 738 (Pet. 24), the Tenth Circuit itself recognized that Range Officials had no discretion to encourage or incite third persons to interefere with the private lands of others, and that allegations that the officials had done so stated a cause of action under the Tort Claims Act. However, on trial Oman could not sustain those allegations. In subsequently affirming judgment for the government after trial, the Tenth Circuit "recognized, however, the discretionary authority of the District Grazer to grant or withhold grazing privileges; and to revoke or cancel the same,

so long as he observes the procedural safeguards of the Range Code," *Oman* v. *United States*, 195 F. 2d 710, 711 (C.A. 10). There are no allegations of procedural irregularity in the present cases, and the court of appeals specifically ruled that "[a]ll that the officials are shown to have done is to grant permits to persons whose cattle trespassed on the lands of the plaintiffs," 331 F. 2d 498, 502.

Rayonier, Inc. v. *United States*, 352 U.S. 315 (Pet. 17), which considered the government's liability for negligence on the part of its employees in extinguishing a forest fire, does not deal with the discretionary function exception to the Tort Claims Act. In *Hatahley* v. *United States*, 351 U.S. 173 (Pet. 18), this Court itself observed that "[w]e are here not concerned with any problem of a 'discretionary function' under the [Tort Claims] Act," 351 U.S. at 181. And, while maintaining a Court Guard lighthouse in proper operation is not a discretionary function of a government employee, *Indian Towing Co.* v. *United States*, 350 U.S. 61 (Pet. 16), such ministerial duties are certainly a far cry from the broad regulatory functions vested in the District Range Managers as described above. The other cases cited by petitioners similarly do not deal with officials required to exercise the type of discretion here presented.

2. The real focus of this litigation is a dispute between petitioners and other livestockmen whose grazing operations are also dependent upon their continued use of the public domain. Holding the United States liable in tort would not resolve this conflict.

What it would do in effect would be to place *de facto* control of substantial areas of the Federal Range in the hands of petitioners, while depriving others of their long established rights in the same areas. See *Buford* v. *Houtz*, 133 U.S. 320; *Kunzler* v. *United States, supra*. In determining which persons were entitled to receive grazing permits, the Secretary and the Range Officials were not free to ignore, as petitioners desire, conflicting claims of other operators based upon established preferential grazing rights accorded them under the Taylor Grazing Act and the Range Code. *McNeil* v. *Seaton*, 281 F. 2d 931 (C.A. D.C.); *Red Canyon Sheep Co.* v. *Ickes*, 98 F. 2d 308 (C.A.D.C.) If petitioners were dissatisfied with the treatment accorded their grazing license applications, they could take an administrative appeal, as they were specifically advised. 43 C.F.R., § 161.10. Unlike in these tort suits, in such administrative proceedings the Range Code provides opportunity for all the affected parties to be heard, 43 C.F.R., § 161.10(b). And, of course, upon exhaustion of such remedies judicial review is available. 43 C.F.R., § 161.10(i)(2); 5 U.S.C. 1009; *Adams* v. *Witmer*, 271 F. 2d 29 (C.A. 9). Petitioners failed to exhaust those remedies. The court of appeals' decision correctly holds that petitioners may not use the Tort Claims Act as a vehicle to test their claims to grazing privileges on the Federal Range where they have failed to exhaust their administrative remedies. *Dalehite* v. *United States*, 346 U.S. 15, 26–36; *Aircraft & Diesel Corp.* v. *Hirsch*, 331 U.S. 752, 767; *Macauley* v. *Waterman*

S.S. Corp., 327 U.S. 540; *Myers* v. *Bethlehem Corp.*, 303 U.S. 41; *Chournos* v. *United States*, 193 F. 2d 321, 323–324 (C.A. 10), certiorari denied, 343 U.S. 977.[9]

CONCLUSION

For the reasons stated, the petition for a writ of certiorari should be denied.

Respectfully submitted.

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SEPTEMBER 1964.

[9] Petitioners are of course not barred from recovering the value of the forage consumed from their lands by the trespassing cattle. As they point out (Pet. 281), Utah law affords them a remedy against the owners of the livestock. And, had they been able to sustain their allegation that federal officials instigated the trespasses, the government would have been liable for the trespass damage also. *Oman* v. *United States*, *supra*.

APPENDIX

The Federal Tort Claims Act, 28 U.S.C. 1346(b), 2671 *et seq.*, provides in pertinent part:

28 U.S.C. 1346(b):

> Subject to the provisions of chapter 171 of this title, the district courts, together with the United States District Court for the District of the Canal Zone and the District Court of the Virgin Islands, shall have exclusive jurisdiction of civil actions on claims against the United States, for money damages, accruing on and after January 1, 1945, for injury or loss of property, or personal injury or death caused by the negligent or wrongful act or omission of any employee of the Government while acting within the scope of his office or employment, under circumstances where the United States, if a private person, would be liable to the claimant in accordance with the law of the place where the act or omission occurred.

28 U.S.C. 2674:

> The United States shall be liable, respecting the provisions of this title relating to tort claims, in the same manner and to the same extent as a private individual under like circumstances, but shall not be liable for interest prior to judgment or for punitive damages.

* * * * *

28 U.S.C. 2680: *Exceptions.* The provisions of this chapter and section 1346(b) of this title shall not apply to—

(a) Any claim based upon an act or omission of an employee of the Government, exercising due care, in the execution of a statute or regulation, whether or not such statute or regulation be valid, or based upon the exercise or performance or the failure to exercise or perform a discretionary function or duty on the part of a federal agency or an employee of the Government, whether or not the discretion involved be abused.

The Taylor Grazing Act, 48 Stat. 1269, as amended, 43 U.S.C. 315 *et seq.*, provides in pertinent part:

43 U.S.C. 315:

In order to promote the highest use of the public lands pending its final disposal, the Secretary of the Interior is authorized, in his discretion, by order to establish grazing districts or additions thereto and/or to modify the boundaries thereof, of vacant, unappropriated, and unreserved lands from any part of the public domain of the United States (exclusive of Alaska), which are not in national forests, national parks and monuments, Indian reservations, revested Oregon and California Railroad grant lands, or revested Coos Bay Wagon Road grant lands, and which in his opinion are chiefly valuable for grazing and raising forage crops: *Provided*, That no lands withdrawn or reserved for any other purpose shall be included in any such district except with the approval of the head of the department having jurisdiction thereof. Nothing in this chapter shall be construed in any way to diminish, restrict, or impair any right which has been heretofore or may be hereafter initiated under existing law validly affecting the public lands, and which is maintained pursuant to such law except as otherwise expressly provided in this chapter, nor to affect any land heretofore or hereafter surveyed which, except for the pro-

visions of this chapter, would be a part of any grant to any State, nor as limiting or restricting the power or authority of any State as to matters within its jurisdiction. Whenever any grazing district is established pursuant to this chapter the Secretary shall grant to owners of land adjacent to such district, upon application of any such owner, such rights-of-way over the lands included in such district for stock-driving purposes as may be necessary for the convenient access by any such owner to marketing facilities or to lands not within such district owned by such person or upon which such person has stock-grazing rights. Neither this Chapter, nor sections 291–301 of this title, commonly known as the "Stock Raising Homestead Act", shall be construed as limiting the authority or policy of Congress or the President to include in national forests public lands of the character described in section 471 of Title 16, for the purposes set forth in section 475 of Title 16, or such other purposes as Congress may specify. Before grazing districts are created in any State as herein provided, a hearing shall be held in the State, after public notice thereof shall have been given, at such location convenient for the attendance of State officials, and the settlers, residents, and livestock owners of the vicinity, as may be determined by the Secretary of the Interior. No such district shall be established until the expiration of ninety days after such notice shall have been given, nor until twenty days after such hearing shall be held: *Providing, however,* That the publication of such notice shall have the effect of withdrawing all public lands within the exterior boundary of such proposed grazing districts from all forms of entry of settlement. Nothing in this chapter shall be construed as in any way altering or restricting the right to hunt or fish within a grazing district in accordance with

the laws of the United States or of any State, or as vesting in any permittee any right whatsoever to interfere with hunting or fishing within a grazing district.

43 U.S.C. 315a:

The Secretary of the Interior shall make provision for the protection, administration, regulation, and improvement of such grazing districts as may be created under the authority of section 315 of this title, and he shall make such rules and regulations and establish such service, enter into such cooperative agreements, and do any and all things necessary to accomplish the purposes of this chapter and to insure the objects of such grazing districts, namely, to regulate their occupancy and use, to preserve the land and its resources from destruction or unnecessary injury, to provide for the orderly use, improvement, and development of the range: and the Secretary of the Interior is authorized to continue the study of erosion and flood control and to perform such work as may be necessary amply to protect and rehabilitate the areas subject to the provisions of this chapter through such funds as may be made available for that purpose, and any willful violation of the provisions of this chapter or of such rules and regulations thereunder after actual notice thereof shall be punishable by a fine of not more than $500.

43 U.S.C. 315b:

The Secretary of the Interior is authorized to issue or cause to be issued permits to graze livestock on such grazing districts to such bona fide settlers, residents, and other stock owners as under his rules and regulations are entitled to participate in the use of the range, upon the payment annually of reasonable fees in

each case to be fixed or determined from time to time, and in fixing the amount of such fees the Secretary of the Interior shall take into account the extent to which such districts yield public benefits over and above those accruing to the users of the forage resources for livestock purposes. Such fees shall consist of a grazing fee for the use of the range, and a range-improvement fee which, when appropriated by the Congress, shall be available until expended solely for the construction, purchase, or maintenance of range improvements. Grazing permits shall be issued only to citizens of the United States or to those who have filed the necessary declarations of intention to become such, as required by the naturalization laws, and to groups, associations, or corporations authorized to conduct business under the laws of the State in which the grazing district is located. Preference shall be given in the issuance of grazing permits to those within or near a district who are landowners engaged in the livestock business, bona fide occupants or settlers, or owners of water or water rights, as may be necessary to permit the proper use of lands, water or water rights owned, occupied, or leased by them except that until July 1, 1935, no preference shall be given in the issuance of such permits to any such owner, occupant, or settler, whose rights were acquired between January 1, 1934, and December 31, 1934, both dates inclusive, except that no permittee complying with the rules and regulations laid down by the Secretary of the Interior shall be denied the renewal of such permit, if such denial will impair the value of the grazing unit of the permittee, when such unit is pledged as security for any bona fide loan. Such permits shall be for a period of not more than ten years, subject to the pref-

erence right of the permittees to renewal in the discretion of the Secretary of the Interior, who shall specify from time to time numbers of stock and seasons of use. During periods of range depletion due to severe drought or other natural causes, or in case of a general epidemic of disease, during the life of the permit, the Secretary of the Interior is authorized, in his discretion to remit, reduce, refund in whole or in part, or authorize postponement of payment of grazing fees for such depletion period so long as the emergency exists: *Provided further,* That nothing in this chapter shall be construed or administered in any way to diminish or impair any right to the possession and use of water for mining, agriculture, manufacture, or other purposes which has heretofore vested or accrued under existing law validly affecting the public lands or which may be hereafter initiated or acquired and maintained in accordance with such law. So far as consistent with the purposes and provisions of this chapter, grazing privileges recognized and acknowledged shall be adequately safeguarded, but the creation of a grazing district or the issuance of a permit pursuant to the provisions of this chapter shall not create any right, title, interest, or estate in or to the lands.

43 U.S.C. 315h:

The Secretary of the Interior shall provide, by suitable rules and regulations, for cooperation with local associations of stockmen, State land officials, and official State agencies engaged in conservation or propagation of wildlife interested in the use of the grazing districts. The Secretary of the Interior shall provide by appropriate rules and regulations for local hearings on appeals from the decisions of the administrative officer in charge in a manner

similar to the procedure in the land department. The Secretary of the Interior shall also be empowered to accept contributions toward the administration, protection, and improvement of lands within or without the exterior boundaries of a grazing district, moneys so received to be covered into the Treasury as a special fund, which is hereby appropriated and made available until expended, as the Secretary of the Interior may direct, for payment of expenses incident to said administration, protection, and improvement, and for refunds to depositors of amounts contributed by them in excess of their share of the cost.

43 U.S.C. 315*o*–1:

(a) In order that the Secretary of the Interior may have the benefit of the fullest information and advice concerning physical, economic, and other local conditions in the several grazing districts, there shall be an advisory board of local stockmen in each such district, the members of which shall be known as grazing district advisers. Each such board shall consist of not less than five nor more than twelve members, exclusive of wildlife representatives, one such representative to be appointed by the Secretary, in his discretion, to membership on each such board. Except for such wildlife representatives, the names of the members of each district advisory board shall be recommended to the Secretary by the users of the range in that district through an election conducted under rules and regulations prescribed by the Secretary. No grazing district adviser so recommended, however, shall assume office until he has been appointed by the Secretary and has taken an oath of office. The Secretary may, after due notice, remove any grazing district adviser from office if in his opinion such removal would be for the good of the service.

(b) Each district advisory board shall meet at least once annually at a time to be fixed by the Secretary of the Interior, or by such other officer to whom the Secretary may delegate the function of issuing grazing permits, and at such other times as its members may be called by such officer. Each board shall offer advice and make a recommendation on each application for such a grazing permit within its district: *Provided,* That in no case shall any grazing district adviser participate in any advice or recommendation concerning a permit, or an application therefor, in which he is directly or indirectly interested. Each board shall further offer advice or make recommendations concerning rules and regulations for the administration of this chapter, the establishment of grazing districts and the modification of the boundaries thereof, the seasons of use and carrying capacity of the range, and any other matters affecting the administration of this chapter within the district. Except in a case where in the judgment of the Secretary an emergency shall exist, the Secretary shall request the advice of the advisory board in advance of the promulgation of any rules and regulations affecting the district.

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